(2) No known focus of swine brucellosis at the time of validation, and completion of one of several methods of surveillance; or no diagnosed case of swine brucellosis in the 12-month period preceding the classification, and a statistical analysis of the combined results of the Market Swine Testing program and other tests that indicate the testing is equivalent to either complete herd testing or slaughter surveillance during a 1- or 2-year period chosen by the State; and

(3) Certification by the appropriate State animal health official, the Veterinarian in Charge, and the Administrator. A State may qualify as a validated brucellosis-free State regardless of the brucellosis status of feral swine in the State, if the feral swine are not in physical contact with domestic swine.

Breeding swine originating from a validated brucellosis-free State or herd may be moved interstate without having been tested with an official test for brucellosis within 30 days prior to interstate movement, which would otherwise be required.

After reviewing its brucellosis program records, we have concluded that Kansas meets the criteria for classification as a validated brucellosis-free State. Therefore, we are adding Kansas to the list of States in § 78.43. This action relieves certain restrictions on the interstate movement of breeding swine from Kansas.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause to publish this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of swine from Kansas.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action removes the requirement that breeding swine be tested for brucellosis prior to movement interstate from Kansas.

Swine herd producers in Kansas are all essentially small businesses (defined by the Small Business Administration as having annual gross receipts of less than $500,000). Currently, these small producers have about 30,000 adult swine tested annually for brucellosis. We are not able to determine exactly how many of these tests are performed for the purpose of certifying breeding swine for movement interstate, but we estimate the number to be very small.

Kansas State laboratories perform swine brucellosis tests at no charge. However, swine herd producers must employ private veterinarians to take the blood samples that are used in these tests.

We anticipate, therefore, that this action will have a minimal, but beneficial, economic impact on swine herd producers in Kansas. The few small producers that move breeder swine interstate will no longer be required to have them tested for brucellosis prior to movement and so will no longer need to employ private veterinarians to take the blood samples used in such tests. This action will result, therefore, in a minimal savings for swine herd producers in Kansas.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.43 [Amended]

2. Section 78.43 is amended by adding "Kansas," immediately after "Iowa,".

Done in Washington, DC, this 22nd day of December 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–31677 Filed 12–27–93; 8:45 am]

BILLING CODE 3410–34–P

---

9 CFR Part 85

[Docket No. 92–170–2]

Official Pseudorabies Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the pseudorabies regulations by adding the Particle Concentration Fluorescence Immunoassay (PCFIA) test to the list of official tests for pseudorabies. The PCFIA test is an effective diagnostic test that can be conducted in less time than other diagnostic tests currently allowed. Adding the PCFIA test to the list of official tests for pseudorabies will help prevent the spread of the disease by making available an additional means by which animal health personnel may obtain timely and accurate diagnoses of pseudorabies.

EFFECTIVE DATE: January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold C. Taft, Senior Staff Veterinarian, Swine Diseases Staff, Veterinary Services, APHIS, USDA, room 204, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, (301) 436–4916.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 85 (referred to below as "the regulations") govern the interstate movement of swine and other livestock (cattle, sheep, and goats) in order to help prevent the spread of pseudorabies. Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine, and other animals. The disease, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus.

Official pseudorabies tests are used under certain circumstances to determine the pseudorabies status of swine. The regulations require that certain swine test negative to an official pseudorabies test before they may be moved interstate.

On July 13, 1993, we published in the Federal Register (58 FR 37666–37667, Docket No. 92–170–1) a proposal to amend the regulations by adding the Particle Concentration Fluorescence Immunoassay (PCFIA) test to the list of official pseudorabies tests.

We solicited comments concerning our proposal for a 60-day comment period ending September 13, 1993. We received one comment by that date, from a veterinary medical association. The commenter supported our proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this rule: (1) Will have an effect on the economy of less than $100 million; (2) will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

This action will provide for the use of an additional official test for determining whether an animal is infected with pseudorabies. The testing requirements for pseudorabies will not change. Moreover, the use of the PCFIA test will not affect the market price for swine. Although the date of sale may change as a result of the faster testing, the economic effect on swine producers will not be significant.

According to information gathered by the Animal and Plant Health Inspection Service, animal health authorities in nine States have expressed interest in using the PCFIA test to test for pseudorabies in swine. Of those nine States, six already own PCFIA equipment, which they currently use in brucellosis testing. The PCFIA test for pseudorabies can be run on either a fully automated Screen Machine, which has a list price of $62,000, or a semi-automated FCA Machine, which has a list price of $27,000; used and reconditioned machines may be obtained at lower cost, according to the manager of the Livestock Business Unit at IDEXX Laboratories, Westbrook, ME (January 1993).

Of the five currently approved official pseudorabies tests, the one most often used is the enzyme-linked immunosorbent assay (ELISA) test. A HerdChek® ELISA screening kit for pseudorabies contains 480 tests and costs $187.20, or $0.39 per test. By comparison, a PCFIA pseudorabies screening kit contains 4,800 tests and costs $1,776, or $0.37 per test. When the per-test savings is added to anticipated savings in time and personnel costs, we estimate that the PCFIA could cost as much as $0.07 less per test than the ELISA test. If the $0.07 per-test savings were applied to the 1.19 million pseudorabies tests run during Fiscal Year (FY) 1992 in the nine States interested in using the PCFIA, those States would realize a total savings of $83,000 for the year. Some States require swine producers, nearly all of which are considered to be small entities, to pay a share of test costs. In the nine States that have expressed an interest in using the PCFIA, the savings to swine producers would work out to approximately $25,000 for the tests run in FY 1992.

Because of the small dollar savings that is expected, and because its use is optional, the addition of the PCFIA test to the list of official pseudorabies tests will have only a negligible economic impact on State animal health agencies and affected swine producers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 85

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 85 is amended as follows:

PART 85—PSEUDORABIES

1. The authority citation for part 85 continues to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 85.1 [Amended]

2. In § 85.1, the definition of *official pseudorabies test* is amended by removing the words "tests and 5. Latex Agglutination Test (LAT)" and adding the words "tests; 5. Latex Agglutination Test (LAT); and 6. Particle Concentration Fluorescence Immunoassay (PCFIA) Test" in their place.

Done in Washington, DC, this 21st day of December 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–31680 Filed 12–27–93; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 92

[Docket No. 93–063–2]

Importation of Cattle From Mexico; Identification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal importation regulations to require that all cattle imported from Mexico be individually identified with a numbered, blue metal eartag issued by the Mexican Ministry of Agriculture and Water Resources. Currently, the regulations require all cattle imported from Mexico to be individually identified with numbered metal tags, but the source of the eartags is not specified. We are taking this action in response to the increasing numbers of tuberculosis-infected animals disclosed at slaughter among cattle imported into the United States from Mexico. Requiring cattle imported from Mexico to be identified with eartags issued by the Mexican Ministry of Agriculture and Water Resources will ensure that we have a uniform means of tracing an animal back to its herd of origin in Mexico, if necessary, following its importation into the United States. This requirement will facilitate the disease surveillance and traceback activities that are carried out under the National Cooperative State-Federal Bovine Tuberculosis Eradication Program.

EFFECTIVE DATE: January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as "the regulations") prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D—Ruminants, §§ 92.400 through 92.435 of 9 CFR part 92, pertains to the importation of ruminants into the United States. Sections 92.424 through 92.429 of the regulations contain specific provisions regarding the importation of ruminants from Mexico.

On September 7, 1993, we published in the **Federal Register** (58 FR 47084–47085, Docket No. 93–063–1) a proposal to amend the regulations to require that all cattle offered for importation into the United States from Mexico be individually identified with numbered, blue metal eartags issued by the Mexican Government. We also proposed to make several minor changes to rectify omissions or errors that had occurred during previous rulemaking.

We solicited comments concerning our proposal for a 30-day comment period ending October 7, 1993. We received four comments by that date, from a cattle buyer, a veterinary medical association, a State animal health board, and a veterinary research laboratory. All four commenters supported the proposal. However, two of the commenters were concerned that an eartag might be removed following an animal's importation, thus making it unlikely that the animal could be traced back to its origin. We recognize that such a possibility exists, and recently published two proposed rules in the **Federal Register** that would make it less likely that a person would remove an eartag.

The first proposed rule, "Interstate Movement of Mexican-Origin Cattle; Certification Requirements," published in the November 12, 1993, **Federal Register** (58 FR 59959–59962, Docket No. 93–084–1), would amend the regulations in 9 CFR part 71 concerning the interstate movement of animals. If adopted, that proposed rule would, in part, have the effect of prohibiting the tampering with or removal of the eartags required by this final rule.

The second proposed rule, "Importation of Cattle from Mexico; Identification Requirements," also published in the November 12, 1993, **Federal Register** (58 FR 59963–59965, Docket No. 93–006–1), would, in part, amend the animal importation regulations in 9 CFR part 92 to require that all cattle imported into the United States from Mexico—not just steers, as is currently the case—bear an "M" brand on the right jaw at the time of importation. The "M" brand would permanently identify an animal as being of Mexican origin, thus making it less likely that a person would remove an eartag simply to mask an animal's Mexican origin.

During a recent meeting attended by representatives of the Animal and Plant Health Inspection Service and the Mexican Government, the Mexican officials requested that the amended regulations state that the official eartags are issued by the *Secretaria de Agricultura y Recursus Hidraulicos* (SARH), which is the Mexican Ministry of Agriculture and Water Resources. To honor that request, we have changed the amended regulations where the general term "Mexican Government" appears to indicate that the eartags are issued by SARH.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

Cattle imported from Mexico account for about 1 percent of the total U.S. cattle population, which in 1991 stood at 99.4 million head. The average price per head for cattle from Mexico in 1991 was $349.06, with the total value of imported Mexican cattle exceeding $361 million for the year. During 1991, approximately 1 million live cattle were imported into the United States from Mexico.

We are amending the regulations to require all cattle imported into the United States from Mexico to be individually identified with a numbered, blue metal eartag issued by SARH. Although all cattle imported into the United States from Mexico have been required to be identified with numbered metal tags, the source of the tags was not specified in the regulations. This rule requires that the eartag be obtained from a specific source, i.e. SARH. We anticipate that this requirement will have no economic effect on any U.S. businesses, large or small, because it will not increase or decrease their cost of doing business. We expect that any unanticipated additional costs that may be incurred will be borne by the exporter of the cattle.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations; (2) has no retroactive effect; and (3) does not

require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.400 [Amended]

2. In § 92.400, in the definition of *Permitted dip*, the word "Division" is removed and the word "Administrator" added in its place.

§ 92.406 [Amended]

3. In § 92.406(a), in the first sentence, the reference "(b) and (c)" is removed and the reference "(c) and (d)" added in its place.

§ 92.427 [Amended]

4. Section 92.427 is amended as follows:

a. In paragraph (c)(1), in the first sentence, the words ", except cattle" are added immediately after the word "Mexico".

b. In paragraph (c)(1), the third sentence is amended by removing the reference "§ 92.430" and adding the reference "§ 92.429" in its place.

c. In paragraph (c)(1), the fourth sentence is amended by removing the words "or ear tag number" and adding the words "and official Mexican Ministry of Agriculture and Water Resources (SARH) blue eartag numbers" in their place.

d. In paragraph (c)(1), the fifth sentence is amended by removing the words "the subparagraph" and adding the words "this paragraph" in their place and by removing the words "eartag or" and adding the words "official Mexican Ministry of Agriculture and Water Resources (SARH) blue eartag and" in their place.

e. In paragraph (d), the introductory text is amended by removing the words "a numbered metal tag;" and adding the words "a numbered, blue metal eartag issued by the Mexican Ministry of Agriculture and Water Resources (SARH);" in their place.

f. In paragraph (d)(2), in the third proviso, the words "a numbered metal tag" are removed and the words "a numbered, blue metal eartag issued by the Mexican Ministry of Agriculture and Water Resources (SARH)" added in their place.

g. In paragraph (e)(2), the reference "§ 92.423(b)" is removed and the reference "§ 92.424(b)" added in its place, and the reference "§ 92.426(d)" is removed and the reference "§ 92.427(d)" added in its place.

Done in Washington, DC, this 21st day of December 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–31681 Filed 12–27–93; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A; Docket No. R-0808]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule to implement section 142 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which amends section 10B of the Federal Reserve Act (FRA) in order to discourage advances, under that section, to undercapitalized and critically undercapitalized depository institutions. The Board is implementing this provision by revising rules relating to the provision of Federal Reserve credit presently contained in Regulation A—Extensions of Credit by Federal Reserve Banks.

EFFECTIVE DATE: January 30, 1994.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452-3625), or Manley Williams, Attorney (202/736-5565), Legal Division; or Gary Gillum, Senior Economist (202/452-3253), or Jim Clouse, Economist (202/452-3922), Division of Monetary Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On August 31, 1993, the Board published for comment proposed revisions to Regulation A— Extensions of Credit by Federal Reserve Banks, to implement section 142 of FDICIA (Title I of Pub. L. 102-242), 58 FR 45851, August 31, 1993. Section 142 amended section 10B of the FRA (12 U.S.C. 347b) to discourage advances under that section to undercapitalized and critically undercapitalized depository institutions by imposing liability on the Board for certain losses incurred by the funds administered by the Federal Deposit Insurance Corporation (FDIC). Specifically, the Board incurs limited liability for increased losses attributable to Federal Reserve Bank advances under section 10B of the FRA to an undercapitalized insured depository institution after that institution has borrowed for 60 days in any 120-day period. The 60 days may be extended for additional 60-day periods with a determination by the Chairman or the head of the appropriate Federal banking agency that the institution is viable. The Board also incurs limited liability for increased losses attributable to section 10B advances to a critically undercapitalized insured depository institution after a five-day period beginning on the day the institution becomes critically undercapitalized. The Board's liability for these increased losses is limited to the lesser of the amount of the loss that the Board or a Federal Reserve Bank would have incurred on any increases in the amount of advances after the expiration of the applicable lending period if those advances had been unsecured, or the amount of interest received on the increased amount of the advances. The Board must report to Congress on any such liability it incurs.

In order to reflect the new provisions of section 10B, the proposed rule made several substantive changes to Regulation A. It also incorporated a number of technical and stylistic changes to update and clarify the regulation. The principal substantive changes were:

(1) Placing limitations on Federal Reserve Bank credit to undercapitalized and critically undercapitalized insured depository institutions;

(2) Describing the loss calculations;

(3) Defining undercapitalized and critically under-capitalized insured depository institutions;

(4) Clarifying the term viable, as it applies to an undercapitalized insured depository institution; and

(5) Providing for assessments on the Federal Reserve Banks for amounts that the Board may be required to pay the FDIC under section 142.

The Board received nine comment letters on the proposed rule. The commenters included four Federal Reserve Banks, two bank holding companies, a commercial bank, a credit union, and a trade association. One commenter opposed the rule, asserting that it was needlessly complex and difficult to interpret. The Board believes, however, that these revisions to Regulation A are necessary to implement section 142 and that the complexity results from the provisions of section 142. Four commenters supported the regulation's implementation of section 142. The remaining commenters offered qualified support for the rule, urging the Board to clarify or modify particular aspects of the rule. With the exception of a clarification of the provision concerning assessments for amounts that the Board of Governors pays to the FDIC due to any excess loss, the final rule is substantially unchanged from the proposed rule.[1] The comments are discussed in greater detail below.

Limitations on Availability

Paragraphs (a) and (b) of § 201.4 of the final rule describe the limitations on the availability of Federal Reserve Bank credit to undercapitalized and critically undercapitalized insured depository institutions, respectively. These limitations apply not only to advances under section 10B of the FRA, which permits advances secured to the satisfaction of the Federal Reserve Bank and which is the only type of advance to which section 142 applies, but also to discount window credit under other sections of the FRA, such as sections 13(2) and 13(8), that are not expressly covered by section 142. The one commenter addressing the scope of the limitations approved of their extension to all discount window credit.

In the case of an undercapitalized insured depository institution, the final rule provides that a Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be an undercapitalized insured depository institution only:

(1) If, in any 120-day period, the advances or discounts are not outstanding for more than 60 days during which the institution is an undercapitalized insured depository institution;

(2) During the 60 days after the receipt of a written certification of viability from the Chairman of the Board of Governors or the head of the appropriate Federal banking agency; or

(3) After consultation with the Board of Governors.

In the case of a critically undercapitalized insured depository institution, the final rule provides that a Federal Reserve Bank may make or have outstanding advances to or discounts for an institution that it knows to be a critically undercapitalized insured depository institution only during the five-day period beginning on the date the institution became a critically undercapitalized insured depository institution or after consultation with the Board of Governors.

In each case, the consultation requirement generally formalizes existing practices under which Federal Reserve Bank staff discuss significant advances to troubled institutions with the Board or Board staff. It also facilitates Board involvement in discount window assistance that may exceed the section 142 limits and trigger Board liability and a reporting requirement. There could be situations, however, in which it would be difficult or impossible for a Federal Reserve Bank to consult with the Board before extending credit that could exceed the section 142 limits. For example, a Federal Reserve Bank may not know that an institution has been critically undercapitalized for more than five days or may only learn this information at the time that the lending decision arises. The final rule, therefore, provides that in unusual circumstances when prior consultation with the Board is not possible, the Federal Reserve Bank should consult with the Board as soon as possible after the extension of credit.

The consultation requirement does not necessarily contemplate formal Board consideration of each extension of credit. In many cases, the requirement could be satisfied through a discussion of a Federal Reserve Bank's plans for dealing with a particular institution. In addition, the Board contemplates delegation of the authority to conduct such consultation to the Chairman, or in his absence, the Vice Chairman in order to facilitate that consultation. The Board is preparing a written policy delineating the consultation requirement.

Five commenters addressed the consultation requirement. Three of them generally endorsed the prior consultation requirement while the fourth commenter urged that the final rule require prior authorization. One of the commenters supporting prior consultation suggested that while the Board should reserve authority over macroeconomic decisions, the primary decision-making authority concerning individual lending decisions should remain with the lending Federal Reserve Bank. The fifth commenter urged that the Board and the Conference of Federal Reserve Bank Presidents come to a general agreement on discount window credit which may result in liability under section 142, especially if Federal Reserve Banks may be liable for another Federal Reserve Bank's lending decisions.

As established by the Federal Reserve Act, a Federal Reserve Bank has the authority to make a discount or advance to a depository institution while the Board of Governors is responsible for establishing policy for the Federal Reserve System and has supervisory authority over the Federal Reserve Banks. The Board believes that the final rule's prior consultation requirement preserves the Board's authority while maintaining Federal Reserve Bank capacity to respond to individual situations as they arise. The Board expects to continue to have close coordination with the Federal Reserve Banks on discount window policy. The current rule was developed in close collaboration with Federal Reserve Bank personnel and the Subcommittee on Discounts and Credits of the Conference of Presidents. The Board is continuing to work with Federal Reserve Bank personnel to develop coordinated approaches to concerning credit to undercapitalized or critically undercapitalized depository institutions.

The Loss Calculations

The final rule introduces three new definitions, "liquidation loss," "increased loss," and "excess loss," which together function to implement the liability provisions of section 142. The term "liquidation loss" refers to the amount of loss that the FDIC would have incurred if it had liquidated the depository institution at a particular point in time. The term "increased loss" refers to the amount of the FDIC's loss which exceeds the liquidation loss due to certain advances which remain outstanding or to new advances which are made after the time the FDIC would have liquidated the institution under the liquidation loss calculation. The

[1] The definition of undercapitalized insured depository institution has been changed to indicate that a depository institution is an undercapitalized insured depository institution if *its* appropriate Federal banking agency has rated it a CAMEL 5, or equivalent rating, as of the most recent examination of such institution; and the section on seasonal credit has been redrafted to improve clarity.

term "excess loss" refers to the amount of the increased loss for which the Board is liable to the FDIC under section 142. The one comment that the Board received on this section indicated that the regulation's loss calculations add clarity to the definitions in section 142.

Capital Category

Under section 142, the limitations on access to Federal Reserve Bank credit depend in part on the capital category—undercapitalized or critically undercapitalized—of the borrowing depository institution. These categories are defined in section 142 through reference to Federal banking agency ratings and through reference to the Prompt Corrective Action standards in section 38 of the Federal Deposit Insurance Act (FDI Act). Section 38 of the FDI Act largely leaves the definition of the capital categories to the Federal banking agencies. The Federal banking agencies define the categories in terms of capital ratios and link changes in capital categories to specific events (including the date that a Call Report is required to be filed, the delivery of an exam report, or the provision of written notice by the appropriate Federal banking agency). The final Regulation A, therefore, adopts the Prompt Corrective Action rules establishing capital categories, including the provisions defining when the categories become effective. This approach avoids linking changes in capital categories solely to day-to-day balance sheet fluctuations that would be impossible to track, is relatively simple, and is consistent with the Prompt Corrective Action standards. The two comments on these definitions favored the Board's approach.

The final rule also provides that a Federal Reserve Bank, before extending credit, should ascertain if an institution is an undercapitalized insured depository institution or a critically undercapitalized insured depository institution. One commenter expressed concern that it may be difficult to ascertain a depository institution's capital category and this commenter along with a second one expressed concern about information flows among Federal banking agencies. The Board is working with the other Federal banking agencies to ensure that Federal Reserve Banks have timely information concerning changes in institutions' capital categories.

Viable

Under section 142, a Federal Reserve Bank may extend discount window credit to an undercapitalized insured depository institution beyond 60 days in a 120-day period if the head of the appropriate Federal banking agency or the Chairman of the Board of Governors of the Federal Reserve System, after an examination, certifies in writing that the institution is viable. An institution is viable under section 142 if, giving due regard to the economic conditions and circumstances in the market in which the institution operates, the institution is not critically undercapitalized, is not expected to become critically undercapitalized, and is not expected to be placed in conservatorship or receivership. This definition not only permits broad discretion in taking economic factors into account, but also allows widely varying levels of expectation as to whether an institution will become critically undercapitalized or be placed into conservatorship or receivership.

In order to provide some guidance to the other Federal banking agencies in making viability determinations, the final regulation states that although there are a variety of criteria for determining viability, the Board ordinarily would consider an undercapitalized institution to be viable if it had submitted a capital restoration plan as required under prompt corrective action, if its primary Federal regulator had accepted the plan, and if the institution is complying with the plan.

Two commenters approved of the Board's clarification of the term viable. One of these commenters noted, however, that a viable institution may require credit while it is in the process of preparing a capital plan or while its primary regulator is in the process of reviewing that plan. This commenter noted that an agricultural bank which suffers losses due to a natural disaster is an example of a viable institution which may need advances before it has an approved capital restoration plan in place.

Prompt corrective action allows a depository institution up to 45 days to submit a capital restoration plan and the appropriate Federal banking agency 60 days to approve the plan. Thus, the appropriate Federal banking agency may not have approved a depository institution's capital restoration plan before the limitations on the availability of credit become effective. While the Board believes that an undercapitalized institution should swiftly restore its capital, the Board also recognizes that a viable institution may not have a capital restoration plan in place before it reaches the borrowing limitations. In such cases, the Board or the appropriate Federal regulator should look to the statutory criteria to evaluate viability.

The third commenter on the definition of viability suggested that a distinction be drawn between undercapitalized and significantly undercapitalized depository institutions and that the latter class of institution be held to a more stringent standard of viability. The Board believes that the standard of viability should be a consistent standard. It recognizes, however, that, as a general matter, the lower a depository institution's capital, the more difficult it will be to demonstrate that the institution is viable.

Assessment

Under section 142, the Board is liable to the FDIC for certain losses due to Federal Reserve Bank lending to an undercapitalized or critically undercapitalized insured depository institution beyond the time periods specified in that section. The final regulation provides that the Boardwill assess the Federal Reserve Banks for the amount of any such loss. While the regulation does not specify an assessment formula, the supplementary material accompanying the proposed rule had indicated that the Board expected that any such loss would assessed on all the Federal Reserve Banks on a *pro rata* basis rather than only on the Federal Reserve Bank making the advance.

Three of the commenters addressed the assessment on Federal Reserve Banks and all three of them proposed that the loss be borne by the lending Federal Reserve Bank. These commenters suggested that pro rata assessments would dilute the incentives intended by section 142, would reduce discipline in lending decisions, and would impose on a Federal Reserve Bank a share of the costs associated with lending decisions in which it played no role. Two of these commenters proposed that extremely large losses could be covered by the loss-sharing arrangement currently in effect among the Federal Reserve Banks and one noted that loss-sharing would prevent the Federal Reserve Banks from becoming too conservative in their lending decisions. This commenter also suggested that the Boards of Directors of the Federal Reserve Banks should be kept apprised of any potential liability under such a loss-sharing arrangement. Under the final rule, the Board expects that any assessment under section 142 will be levied on the lending Federal Reserve Bank unless the loss is large. Large losses will be covered in a manner analogous to the loss sharing agreement currently in effect among the Federal Reserve Banks.

One commenter inquired about assessments for losses due to lending to undercapitalized and critically undercapitalized credit unions. Because credit unions are not FDIC insured, there could be no loss to the FDIC insurance funds due to advances to or discounts for a credit union and thus there could be no Board liability to the FDIC for which the Board would have to assess the Federal Reserve Banks. Nonetheless the Board expects that similar standards in extending credit will be applied to credit unions.

Other

The Board also received a number of comments which addressed issues other than those raised by section 142 and the attendant amendments to Regulation A. For example, one commenter sought clarification of the reference, in § 201.3(b)(2), to an institution's average total deposits in the preceding calendar year. This section has been redrafted to improve clarity.

One commenter, while supporting the amendment to § 201.6(d) which would permit a Federal Reserve Bank to authorize a depository institution to act as an agent of another depository institution in receiving Federal Reserve Bank credit, proposed that the Board coordinate all lending to commonly controlled depository institutions through a lead Federal Reserve Bank in the banking organization's home Federal Reserve District. The Board believes that individual depository institutions are separate corporate entities with individual access to the discount window. The proposed change would permit, but not require, affiliated institutions to coordinate their borrowing through an individual Federal Reserve Bank, with the authorization of the lending Federal Reserve Bank.

This commenter also raised a number of questions concerning permissible types of collateral. Under the Federal Reserve Act, the collateralization of discount window advances is the primary responsibility of the individual Federal Reserve Banks. The Federal Reserve Banks generally are willing to accept collateral of adequate quality in which it can perfect a security interest. The commenter also proposed that the Board permit depository institutions to borrow against collateral held by operating subsidiaries, and that the procedures and criteria for Federal Reserve Bank credit be clarified and made uniform throughout the Federal Reserve Districts. Finally, the commenter proposed that the procedures and criteria for Federal Reserve Bank credit be based on market practices. A high level of communication exists among the Federal Reserve Banks and between the Federal Reserve Banks and the Board and to the degree appropriate, the Federal Reserve Banks adhere to market standards in evaluating collateral. The Board does not believe, however, that it is appropriate at this time to restrict a Federal Reserve Bank's discretion in accepting or valuing collateral or in evaluating the enforceability of security interests. The Board also notes that the liquidation value of collateral may be lower than the market value of that collateral.

One commenter proposed that all Federal banking agencies be combined into one body. Such an action is beyond the scope of this Regulation.

Regulatory Flexibility Act Analysis

Pursuant to section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board published for comment an initial regulatory flexibility analysis of its proposed Regulation A. Section 604 of the Regulatory Flexibility Act requires the Board to publish a final regulatory flexibility analysis with the final rule containing:

(1) A statement of the need for and objectives of, the rule;

(2) A summary of the issues revised by the public comment in response to the initial regulatory flexibility statement, a summary of the assessment if such comments and a statement of changes made in the proposed rule in response to comments;

(3) A description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities, and a statement of why these alternatives rejected.

Each of these items discussed in the Supplementary Information above.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit.

For reasons set forth in the preamble, the Board is amending 12 CFR part 201 as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for part 201 is revised to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 374, 374a and 461.

2. Sections 201.1 through 201.6 are revised and §§ 201.7 through 201.9 are added to read as follows:

§ 201.1 Authority, scope and purpose.

(a) *Authority and scope.* This part is issued under the authority of sections 10A, 10B, 13, 13A, and 19 of the FRA (12 U.S.C. 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 374, 374a, and 461), other provisions of the FRA, and section 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d) and relates to extensions of credit by Federal Reserve Banks to depository institutions and others.

(b) *Purpose.* This part establishes rules under which Federal Reserve Banks may extend credit to depository institutions and others. Extending credit to depository institutions to accommodate commerce, industry, and agriculture is a principal function of Federal Reserve Banks. While open market operations are the primary means of affecting the overall supply of reserves, the lending function of the Federal Reserve Banks is an effective method of supplying reserves to meet the particular credit needs of individual depository institutions. The lending functions of the Federal Reserve System are conducted with due regard to the basic objectives of monetary policy and the maintenance of a sound and orderly financial system.

§ 201.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Appropriate Federal banking agency* has the same meaning as in section 3 of the FDI Act (12 U.S.C. 1813(q)).

(b) *Critically undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)) that is deemed to be critically undercapitalized under section 38 of the FDI Act (12 U.S.C. 1831o(b)(1)(E)) and the implementing regulations.

(c) (1) *Depository institution* means an institution that maintains reservable transaction accounts or nonpersonal time deposits and is:

(i) An *insured bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(h)) or a bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(ii) A *mutual savings bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(f)) or a bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iii) A *savings bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(g)) or a bank which is eligible to

make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iv) An *insured credit union* as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752(7)) or a credit union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act (12 U.S.C. 1781);

(v) A *member* as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(4)); or

(vi) A *savings association* as defined in section 3 of the FDI Act (12 U.S.C. 1813(b)) which is an insured depository institution as defined in section 3 of the Act (12 U.S.C. 1813(c)(2)) or is eligible to apply to become an insured depository institution under section 5 of the Act (12 U.S.C. 1815(a)).

(2) The term *depository institution* does not include a financial institution that is not required to maintain reserves under Regulation D (12 CFR part 204) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public.

(d) *Liquidation loss* means the loss that any deposit insurance fund in the FDIC would have incurred if the FDIC had liquidated the institution:

(1) In the case of an undercapitalized insured depository institution, as of the end of the later of:

(i) Sixty days:

(A) In any 120-day period;

(B) During which the institution was an undercapitalized insured depository institution; and

(C) During which advances or discounts were outstanding to the depository institution from any Federal Reserve Bank; or

(ii) The 60 calendar day period following the receipt by a Federal Reserve Bank of a written certification from the Chairman of the Board of Governors or the head of the appropriate Federal banking agency that the institution is viable.

(2) In the case of a critically undercapitalized insured depository institution, as of the end of the 5-day period beginning on the date the institution became a critically undercapitalized insured depository institution.

(e) *Increased loss* means the amount of loss to any deposit insurance fund in the FDIC that exceeds the liquidation loss due to:

(1) An advance under section 10B(1)(a) of the FRA that is outstanding to an undercapitalized or critically undercapitalized insured depository institution without payment having been demanded as of the end of the periods specified in paragraphs (d)(1) and (2) of this section; or

(2) An advance under section 10B(1)(a) of the Federal Reserve Act that is made after the end of such periods.

(f) *Excess loss* means the lesser of the increased loss or that portion of the increased loss equal to the lesser of:

(1) The loss the Board of Governors or any Federal Reserve Bank would have incurred on the amount by which advances under section 10B(1)(a) exceed the amount of advances outstanding at the end of the periods specified in paragraphs (d)(1) and (2) of this section if those increased advances had been unsecured; or

(2) The interest received on the amount by which the advances under section 10B(1)(a) exceed the amount of advances outstanding, if any, at the end of the periods specified in paragraphs (d)(1) and (2) of this section.

(g) *Transaction account and nonpersonal time deposit* have the meanings specified in Regulation D (12 CFR part 204).

(h) *Undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)) that:

(1) Is not a critically undercapitalized insured depository institution; and

(2) (i) Is deemed to be undercapitalized under section 38 of the FDI Act (12 U.S.C. 1831o(b)(1)(C)) and the implementing regulations; or

(ii) Has received from its appropriate Federal banking agency a composite CAMEL rating of 5 under the Uniform Financial Institutions Rating System (or an equivalent rating by its appropriate Federal banking agency under a comparable rating system) as of the most recent examination of such institution.

(i) *Viable*, with respect to a depository institution, means that the Board of Governors or the appropriate Federal banking agency has determined, giving due regard to the economic conditions and circumstances in the market in which the institution operates, that the institution is not critically undercapitalized, is not expected to become critically undercapitalized, and is not expected to be placed in conservatorship or receivership. Although there are a number of criteria that may be used to determine viability, the Board of Governors believes that ordinarily an undercapitalized insured depository institution is viable if the appropriate Federal banking agency has accepted a capital restoration plan for the depository institution under 12 U.S.C. 1831o(e)(2) and the depository institution is complying with that plan.

§ 201.3 Availability and terms.

(a) *Adjustment credit.* Federal Reserve Banks extend adjustment credit on a short-term basis to depository institutions to assist in meeting temporary requirements for funds or to cushion more persistent shortfalls of fundspending an orderly adjustment of a borrowing institution's assets and liabilities. Such credit generally is available only for appropriate purposes and after reasonable alternative sources of funds have been fully used, including credit from special industry lenders such as Federal Home Loan Banks, the National Credit Union Administration's Central Liquidity Facility, and corporate central credit unions. Adjustment credit is usually granted at the basic discount rate, but under certain circumstances a special rate or rates above the basic discount rate may be applied.

(b) *Seasonal credit.* Federal Reserve Banks extend seasonal credit for periods longer than those permitted under adjustment credit to assist smaller depository institutions in meeting regular needs for funds arising from expected patterns of movement in their deposits and loans. A special rate or rates at or above the basic discount rate may be applied to seasonal credit.

(1) Seasonal credit is only available if:

(i) The depository institution's seasonal needs exceed a threshold that the institution is expected to meet from other sources of liquidity (this threshold is calculated as certain percentages, established by the Board of Governors, of the institution's average total deposits in the preceding calendar year);

(ii) The Federal Reserve Bank is satisfied that the institution's qualifying need for funds is seasonal and will persist for at least four weeks; and

(iii) Similar assistance is not available from special industry lenders.

(2) The Board may establish special terms for seasonal credit when depository institutions are experiencing unusual seasonal demands for credit in a period of liquidity strain.

(c) *Extended credit.* Federal Reserve Banks extend credit to depository institutions under extended credit arrangements where similar assistance is not reasonably available from other sources, including special industry lenders. Such credit may be provided where there are exceptional circumstances or practices affecting a particular depository institution including sustained deposit drains, impaired access to money market funds, or sudden deterioration in loan repayment performance. Extended

credit may also be provided to accommodate the needs of depository institutions, including those with longer term asset portfolios, that may be experiencing difficulties adjusting to changing money market conditions over a longer period, particularly at times of deposit disintermediation. A special rate or rates above the basic discount rate may be applied to extended credit.

(d) *Emergency credit for others.* In unusual and exigent circumstances, a Federal Reserve Bank may, after consultation with the Board of Governors, advance credit to individuals, partnerships, and corporations that are not depository institutions if, in the judgment of the Federal Reserve Bank, credit is not available from other sources and failure to obtain such credit would adversely affect the economy. The rate applicable to such credit will be above the highest rate in effect for advances to depository institutions. Where the collateral used to secure such credit consists of assets other than obligations of, or fully guaranteed as to principal and interest by, the United States or an agency thereof, an affirmative vote of five or more members of the Board of Governors is required before credit may be extended.

§ 201.4 Limitations on availability and assessments.

(a) *Advances to or discounts for undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be an undercapitalized insured depository institution, only:

(1) If, in any 120-day period, advances or discounts from any Federal Reserve Bank to that depository institution are not outstanding for more than 60 days during which the institution is an undercapitalized insured depository institution; or

(2) During the 60 calendar days after the receipt of a written certification from the Chairman of the Board of Governors or the head of the appropriate Federal banking agency that the borrowing depository institution is viable; or

(3) After consultation with the Board of Governors.[1]

(b) *Advances to or discounts for critically undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be a critically undercapitalized insured depository institution only:

(1) During the 5-day period beginning on the date the institution became a critically undercapitalized insured depository institution; or

(2) After consultation with the Board of Governors.[2]

(c) *Assessments.* The Board of Governors will assess the Federal Reserve Banks for any amount that it pays to the FDIC due to any excess loss. Each Federal Reserve Bank shall be assessed that portion of the amount that the Board of Governors pays to the FDIC that is attributable to an extension of credit by that Federal Reserve Bank, up to one percent of its capital as reported at the beginning of the calendar year in which the assessment is made. The Board of Governors will assess all of the Federal Reserve Banks for the remainder of the amount it pays to the FDIC in the ratio that the capital of each Federal Reserve Bank bears to the total capital of all Federal Reserve Banks at the beginning of the calendar year in which the assessment is made, provided, however, that if any assessment exceeds 50 percent of the total capital and surplus of all Federal Reserve Banks, whether to distribute the excess over such 50 percent shall be made at the discretion of the Board of Governors.

(d) *Information.* Before extending credit a Federal Reserve Bank should ascertain if an institution is an undercapitalized insured depository institution or a critically undercapitalized insured depository institution.

§ 201.5 Advances and discounts.

(a) Federal Reserve Banks may lend to depository institutions either through advances secured by acceptable collateral or through the discount of certain types of paper. Credit extended by the Federal Reserve Banks generally takes the form of an advance.

(b) Federal Reserve Banks may make advances to any depository institution if secured to the satisfaction of the Federal Reserve Bank. Satisfactory collateral generally includes United States government and Federal agency securities, and, if of acceptable quality, mortgage notes covering 1-4 family residences, State and local government securities, and business, consumer and other customer notes.

(c) If a Federal Reserve Bank concludes that a depository institution will be better accommodated by the discount of paper than by an advance, it may discount any paper endorsed by the depository institution that meets therequirements specified in the FRA.

§ 201.6 General requirements.

(a) *Credit for capital purposes.* Federal Reserve credit is not a substitute for capital.

(b) *Compliance with law and regulation.* All credit extended under this part shall comply with applicable requirements of law and of this part. Each Federal Reserve Bank:

(1) Shall keep itself informed of the general character and amount of the loans and investments of depository institutions with a view to ascertaining whether undue use is being made of depository institution credit for the speculative carrying of or trading in securities, real estate, or commodities, or for any other purpose inconsistent with the maintenance of sound credit conditions; and

(2) Shall consider such information in determining whether to extend credit.

(c) *Information.* A Federal Reserve Bank shall require any information it believes appropriate or desirable to insure that paper tendered as collateral for advances or for discount is acceptable and that the credit provided is used in a manner consistent with this part.

(d) *Indirect credit for others.* No depository institution shall act as the medium or agent of another depository institution in receiving Federal Reserve credit except with the permission of the Federal Reserve Bank extending credit.

§ 201.7 Branches and agencies.

Except as may be otherwise provided, this part shall be applicable to United States branches and agencies of foreign banks subject to reserve requirements under Regulation D (12 CFR part 204) in the same manner and to the same extent as depository institutions.

§ 201.8 Federal Intermediate Credit Banks.

A Federal Reserve Bank may discount for any Federal Intermediate Credit Bank agricultural paper or notes payable to and bearing the endorsement of the Federal Intermediate Credit Bank that cover loans or advances made under subsections (a) and (b) of section 2.3 of the Farm Credit Act of 1971 (12 U.S.C. 2074) and that are secured by paper eligible for discount by Federal Reserve Banks. Any paper so discounted shall have a period remaining to maturity at the time of discount of not more than nine months.

§ 201.9 No obligation to make advances or discounts.

A Federal Reserve Bank shall have no obligation to make, increase, renew, or

[1] In unusual circumstances, when prior consultation with the Board is not possible, a Federal Reserve Bank should consult with the Board as soon as possible after extending credit that requires consultation under this paragraph.

[2] See footnote 1 in § 201.4(a)(3).

extend any advance or discount to any depository institution.

3. In §§ 201.108 and 201.109, footnotes 1, 1a, 2, and 3 are redesignated as footnotes 3, 4, 5, and 6, respectively.

By order of the Board of Governors of the Federal Reserve System, December 16, 1993.

William W. Wiles, .

Secretary of the Board.

[FR Doc. 93-31198 Filed 12-27-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 27558; Amdt. No. 1578]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register of December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR and (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control approaches, Standard instrument, Incorporation by reference (1) navigation.

Issued in Washington, DC, on December 17, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR, part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective	State	City	Airport	FDC No.	SIAP
12/07/93 ...	CO	Montrose	Montrose Regional	FDC 3/6512	VOR/DME Rwy 13, Amdt 8...
12/07/93 ...	CO	Montrose	Montrose Regional	FDC 3/6513	VOR Rwy 13, Amdt 7...
12/07/93 ...	CO	Montrose	Montrose Regional	FDC 3/6515	ILS/DME Rwy 17, Orig-A...
12/07/93 ...	GA	Atlanta	The William B. Hartsfield Atlanta Intl.	FDC 3/6506	ILS Rwy 8L Amdt 1A...
12/07/93 ...	GA	Atlanta	The William B. Hartsfield Atlanta Intl.	FDC 3/6507	ILS Rwy 8R Amdt 58...
12/07/93 ...	GA	St Marys	St Marys	FDC 3/6511	Radar-1, Orig...
12/07/93 ...	TX	Navasota	Navasota Muni	FDC 3/6525	VOR–A Amdt 1...
12/09/93 ...	CO	Montrose	Montrose Regional	FDC 3/6554	ILS/DME Rwy 17, Orig...
12/09/93 ...	MI	Iron Mountain	Ford	FDC 3/6546	LOC/DME BC Rwy 19 Amdt 11A...
12/09/93 ...	MI	Muskegon	Muskegon County	FDC 3/6569	ILS Rwy 32 Amdt 16...
12/09/93 ...	MI	Sault Ste Marie	Chippewa County Intl	FDC 3/6570	NDB Rwy 34 Amdt 4A...
12/09/93 ...	MI	Sault Ste Marie	Chippewa County Intl	FDC 3/6571	NDB Rwy 16 Amdt 5A...
12/09/93 ...	MI	Sault Ste Marie	Chippewa County Intl	FDC 3/6572	VOR–A or Tacan-A Amdt 5A...
12/09/93 ...	OH	Wooster	Wayne County	FDC 3/6563	VOR Rwy 9 Orig...
12/09/93 ...	OH	Wooster	Wayne County	FDC 3/6564	VOR Rwy 27 Orig...
12/09/93 ...	OH	Wooster	Wayne County	FDC 3/6565	NDB Rwy 27 Amdt 7...
12/09/93 ...	OH	Wooster	Wayne County	FDC 3/6566	Departure procedure/Take-off minimums Orig...
12/10/93 ...	OK	Tulsa	Tulsa Intl	FDC 3/6584	Radar-1 Amdt 16...
12/14/93 ...	AR	Fort Smith	Fort Smith Regional	FDC 3/6660	VOR or Tacan Rwy 25 Amdt 20...
12/16/93 ...	SC	Hilton Head Island	Hilton Head	FDC 3/6668	RNAV Rwy 21 Amdt 4A...

[FR Doc. 93–31625 Filed 12–27–93; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27557; Amdt. No. 1577]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents in unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on December 17, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective March 3, 1994

Firebaugh CA, Firebaugh, VOR/DME–A, Amdt. 2

Montrose, CO, Montrose Regional, ILS/DME RWY 17, Amdt.1

Teterboro, NJ, Teterboro, ILS RWY 6, Amdt. 26

Chandler, OK, Chandler Muni, NDB RWY 17, Amdt. 3

Provo, Utah, Provo Muni, VOR–A, Amdt. 6, CANCELLED

Provo, Utah, Provo Muni, VOR RWY 13, Orig.

Provo, Utah, Provo Muni, VOR//DME RWY 13, Amdt. 3, CANCELLED

Provo, Utah, Provo Muni, ILS RWY 13, Amdt. 3

Mosinee, WI, Central Wisconsin. ILS RWY 8, Amdt. 11

Effective February 3, 1994

Los Angeles, CA Whiteman, VOR–A, Orig.

Chariton, IA, Chariton Muni, VOR RWY 17, Amdt.1

Chariton, IA, Chariton Muni, NDB RWY 17, Amdt. 3

Knoxville, IA, Knoxville Muni, NDB RWY 15, Amdt. 5

Knoxville, IA, Knoxville Muni, NDB RWY 33, Amdt. 4

Phillipsburg, KS, Phillipsburg Muni, NDB RWY 31, Amdt. 6

Clarion, PA, Clarion County, VOR–A, Amdt. 1

Clarion, PA, Clarion County, VOR/DME RNAV RWY 6, Orig.

Clarion, PA, Clarion County, VOR/DME RNAV RWY 24, Orig.

Caddo Mills, TX, Caddo Mills Muni, NDB RWY 35L, Amdt. 1

Effective January 6, 1994

Sacramento, CA, Mather Field, VOR RWY 4R, Orig.

Sacramento, CA, Mather Field, VOR/DME RWY 22L, Orig.

Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, ILS RWY 27R, Amdt. 5

Morris, IL, Morris Muni-James R Washburn Field, VOR–A, Amdt. 9

Indianapolis, IN, Greenwood Muni, VOR–A, Amdt. 4

Indianapolis, IN, Greenwood Muni, NDB RWY 1, Amdt. 2

Beaufort, NC, Michael J. Smith Field, NDB RWY 14, Amdt. 7

Beaufort, NC, Michael J. Smith Field, NDB RWY 14, Orig.

Beaufort, NC, Michael J. Smith, NDB RWY 21, Amdt. 3A, CANCELLED

Beaufort, NC, Michael J. Smith, NDB RWY 21, Orig.

Nashville, TN, Nashville Intl, ILS RWY 2R, Amdt. 3

San Antonio, TX, San Antonio Intl, ILS RWY 3, Amdt. 17

San Antonio, TX, San Antonio Intl, ILS RWY 12R, Amdt. 12

San Antonio, TX, San Antonio Intl, RADAR–1, Amdt. 25

San Antonio, TX, San Antonio Intl, VOR/DME RNAV RWY 30L, Amdt. 10

Oconto, WI, Oconto Muni, NDB RWY 11, Amdt. 4, CANCELLED

Oconto, WI, Oconto Muni, NDB RWY 29, Orig.

Effective December 3, 1993

Los Angeles, CA, Los Angeles Intl, ILS RWY 25R, Amdt. 8

[FR Doc. 93–31624 Filed 12–27–93; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Commodity Options; Prohibited Trading

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is amending Rule 1.19, 17 CFR 1.19 (1992), by including an additional exception from the prohibition on futures commission merchants ("FCMs") from assuming any financial responsibility for the fulfillment of commodity options. To help ensure the financial integrity of FCMs undertaking such transactions, the Commission also is amending Rule 1.17, the Commission's rule regarding required regulatory capital for FCMs, to provide an appropriate capital treatment.

EFFECTIVE DATE: January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Deputy Director, Division of Trading and Markets, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–8955, 254–6990, respectively.

SUPPLEMENTARY INFORMATION:

Commission Rule 1.19 prohibits futures commission merchants ("FCMs") and introducing brokers ("IBs") from assuming any financial responsibility for the fulfillment of any commodity option, with two exceptions. These exceptions are for options traded on or subject to the rules of a designated option contract market or on or subject to the rules of a foreign board of trade, in accordance with the requirements of part 30 of the Commission's rules.[1]

The Commission, on August 13, 1993, published a further proposed exception from the Rule 1.19 prohibition on FCMs from assuming any "financial responsibility for the fulfillment of any commodity option." 58 FR 43087. The effect of this proposed revision would have been to permit FCMs to grant certain off-exchange trade options which are permitted under Commission Rule 32.4, 17 CFR 32.4.[2]

Commission Rule 1.19 was first promulgated by the Commission's predecessor agency, the Commodity Exchange Authority, in 1973, prior to the adoption of Commission rules relating to regulatory capital.[3]

In proposing an additional exception from this prohibition for any option permitted under § 32.4 for which a capital treatment is specified in § 1.17, the Commission reasoned that:

> The Commission, upon further experience over the years, is convinced that its previously stated intent to delete the prohibition in Rule 1.19 as it applies to FCMs, subject to a capital treatment, is appropriate. In this regard, the Commission notes that Rule 1.19 already excepts FCMs from its prohibitions for options traded on exchanges. The prohibition of Rule 1.19 therefore, currently applies to off-exchange options permitted under Part 32 of the Commission's rules. Although concern over the risk to FCMs from dealing in certain over-the-counter options previously may have supported the prohibition, the Commission believes that FCMs generally have had a sufficient opportunity during the intervening years to become sufficiently familiar with option trading and theory, so that they can institute appropriate internal controls to address their risk from such positions provided that the Commission has articulated a capital treatment for such positions.
>
> 58 FR at 43088.

The risk to the FCM of assuming the positions permitted under this exception must be reflected fully by FCMs in the computation of their adjusted net capital under Commission Rule 1.17. Accordingly, the Commission proposed to extend the capital treatment provided under Rule 1.17 that certain "haircuts" be taken in computing net capital for "securities options," 17 CFR 1.17(c)(5)(vi),[4] to over-the-counter options on foreign currencies, security indices and options on government debt."[5] Moreover, the Commission proposed to apply the same capital treatment to granted over-the-counter options or options on such "securities," applying the charges to capital specified in § 1.17(c)(5)(vi) for those positions.

As noted in the Notice of Proposed Rulemaking, option positions for which Rule 1.17(c)(5)(vi) fails to specify a method of computation are excluded from the relief available under this exception until such time as Rule 1.17 is amended to reflect the risk of such positions or the Commission addresses applications on a case-by-case basis. See e.g., CFTC Interpretative Letter 91–1, (1991–1992 Transfer Binder) Comm. Fut. L. Rep., (CCH) ¶ 25,065 (May 29, 1991).[6] In this regard, the Commission

---

[1] Commission Rule 1.19 provides that: No futures commission merchant or introducing broker may make, underwrite, issue, or otherwise assume any financial responsibility for the fulfillment of, any commodity option except:

(a) Commodity options traded on or subject to the rules of a contract market in accordance with the requirements of part 33 of this chapter; or (b) Commodity options traded on or subject to the rules of a foreign board of trade in accordance with the requirements of part 30 of this chapter.

[2] Rule 32.4 provides, in part, that: the provisions of this part shall not apply to a commodity option offered by a person which has a reasonable basis to believe that the option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such.

By proposing to amend the prohibition of Rule 1.19 that FCMs not assume financial responsibility for the fulfillment of any commodity option, the Commission was not also proposing to expand the scope of options which can be traded legally. Accordingly, in light of the existing general suspension for off-exchange trading of commodity options under Commission Rule 32.11, the proposed amendment to Rule 1.19 only would have permitted FCMs to grant options, pursuant to Commission Rule 32.4, where the offeree is a producer, processor, or commercial user of, or a merchant handling, the underlying commodity in its business.

[3] A fuller explanation of the history of Commission Rule 1.19 is provided in the Notice of Proposed Rulemaking, 58 FR 43087–88.

[4] 17 CFR 1.17(c)(5)(vi) incorporates by reference the net capital rules of the Securities and Exchange Commission (SEC), which contains a generic treatment for options positions, as interpreted, stating that in computing net capital, the calculation should use: In the case of securities options used by the applicant or registrant in computing net capital, the deductions specified, in § 240.15c3–1 appendix A of this title, after effecting certain adjustments to net capital for listed and unlisted options as set forth in such appendix:

An SEC interpretative letter, covering the net capital treatment of baskets of securities offset by securities options on broad based security indices was issued to Mr. David Marcus, New York Stock Exchange, Inc., on February 27, 1986. SEC interpretative letters covering foreign currency option spreads and forwards offset by foreign currency options were issued to Ms. Susan R. Mann and Mr. Robert B. Gilmore, of the Philadelphia Stock Exchange, Inc., dated January 15, 1985 and February 14, 1986, respectively. The SEC interpretative letter covering the treatment of government debt options was issued to Mr. Salvatore Pallante, New York Stock Exchange, Inc., on January 31, 1990. Commission Rule 1.17 currently incorporates by reference securities haircuts, and is intended to automatically incorporate any amendments or adjustments to those haircuts permitted by the SEC.

[5] By extending the capital treatment of such instruments under SEC regulations to certain instruments, which are regulated by the Commission under the CEA, see, section 2(a)(1)(B) of the Act, the Commission does not intend to affect jurisdictional boundaries, but rather, merely to treat equally, for regulatory capital purposes, economically similar instruments.

[6] As noted therein, Rule 1.17(c)(5)(vi) currently does not explicitly specify the net capital treatment for all option positions which otherwise could be included under the exception, nor has the SEC rule been interpreted to reference a particular treatment for commodity options, except that the treatment of forex options, government debt securities and stock indices is separately identified by SEC